Filed 3/13/15 P. v. Barcena CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>RUBEN BARCENA,<br><br>Defendant and Appellant. | B255040<br><br>(Los Angeles County<br>Super. Ct. No. KA100621) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Mike Camacho, Judge. Affirmed as modified, remanded with directions.

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

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## INTRODUCTION

Ruben Barcena appeals from a judgment and sentence following his plea of no contest to reckless evasion and unlawful taking or driving of a vehicle. He contends that the trial court erred in denying his motion to suppress pursuant to Penal Code section 1538.5;[1] that the court erred in sentencing him to six years for six prior prison terms when he only had four prior prison terms; and that he was entitled to serve his sentence at 50 percent of time served, instead of 85 percent. We will correct the abstract of judgment to reflect that appellant suffered six section 667.5, subdivision (b) enhancements. As modified, we affirm.

## PROCEDURAL HISTORY[2]

On January 9, 2013, at approximately 11:04 a.m., City of Covina Police Officer Mario Corona observed appellant driving a black pickup truck. Corona noticed that the license plate lamp was not working, so he followed the vehicle. When the truck was stopped at a railroad crossing, Corona conducted a records check of the truck's license plate, which revealed that the vehicle had been reported as stolen. When the officer activated his lights and siren to conduct a traffic stop, the truck sped away. The officer observed the truck being driven at approximately 50 miles per hour in a 25 mile-per-hour zone and on the wrong side of the road. The truck eventually slowed to about 5 to 10 miles per hour, and appellant jumped out. Appellant fled on foot while the truck collided with a parked vehicle. Appellant attempted to jump over a fence, but was unsuccessful. He was apprehended by Corona. A spark plug was found on appellant's person,

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[1] All further statutory citations are to the Penal Code, unless otherwise stated.

[2] As appellant pled no contest, the factual statement is based on the testimony presented at the preliminary hearing and the hearing on appellant's motion to suppress.

and the search of the truck disclosed a shaved key.

By an information filed in the Los Angeles County Superior Court, appellant was charged in count 1,with reckless evasion in violation of Vehicle Code section 2800.2, subdivision (a); in count 2, with unlawful taking or driving a vehicle in violation of Vehicle Code section 10851, subdivision (a); in count 3, with receiving a stolen motor vehicle, in violation of section 496d, subdivision (a); in count 4, with misdemeanor obstructing a police officer in violation of section 148, subdivision (a)(1); and in count 5, with misdemeanor possession of burglary tools, in violation of section 466. The information also alleged that appellant suffered two prior "strikes" (§§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i)) and seven prior prison terms (§ 667.5, subd. (b)). Appellant pleaded not guilty and denied the allegations.

Appellant elected to represent himself. On September 30, 2013, appellant filed a motion to suppress evidence pursuant to section 1538.5. The motion was heard and denied on the following day. Appellant thereafter entered pleas of no contest to counts 1 and 2 of the information in exchange for a 10-year sentence, and admitted that he had suffered a prior strike and six prior prison terms.[3] The remaining counts and allegations were dismissed by the court on the People's motion.

On March 3, 2014, the court sentenced appellant to an aggregate term of 10 years, consisting of a doubled midterm sentence of four years in count 1, a concurrent midterm sentence in count 2, and six consecutive one-year terms for each of the prior prison terms. The abstract of judgment incorrectly listed five of the prior prison terms as being pursuant to section 667.5, subdivision (a), rather

[3] Although the information alleged appellant had two prior strikes and seven prior prison terms, before appellant accepted the plea offer of 10 years, the prosecutor stated in open court that appellant had only one prior strike and six prior prison terms.

than section 667.5, subdivision (b). The court credited appellant with a total of 840 days of presentence custody credits, consisting of 420 actual days and 420 good time/work time custody credits.

Appellant timely appealed from the judgment and sentence. In his notice of appeal, he stated that a certificate of probable cause was not needed, as he was appealing the denial of his motion to suppress and the imposition of an illegal sentence.

## DISCUSSION

After examining the record, appointed appellate counsel filed a brief raising no issues, but asking this court to independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442. (See *Smith v. Robbins* (2000) 528 U.S. 259, 264.) Appellant filed a supplemental letter brief, asking this court to consider three arguments: (1) whether it was error to deny his motion to suppress, as evidence presented at the section 1538.5 hearing showed that his license plate lamp was functioning properly; (2) whether the imposition of six one-year prior prison term enhancements was authorized, as he had served only four prior prison terms; and (3) whether he was entitled to presentence good time/ work time credit to reduce his sentence up to 50 percent, as his prior strike (for first-degree residential burglary) was not a violent felony under section 667.5, subdivision (c)(21). Concurrently, appellant requested new appellate counsel, contending that appointed counsel's representation was inadequate for failing to raise the three issues detailed above.

### A. *Motion to Suppress*

At the hearing on his motion to suppress, appellant suggested that Corona profiled him, because the officer's stated reason for initiating the encounter -- that

appellant's license plate lamp was not working -- was disproved by video footage from Corona's patrol unit's dash camera. Thus, appellant argued, Corona lacked probable cause to initiate a traffic stop, and the stop violated the Fourth Amendment's proscription against unreasonable search and seizure. The trial court disagreed. It held that regardless of whether the license plate lamp was working, the officer had probable cause to initiate a traffic stop when the records check of the truck's license plate revealed that the truck had been reported as stolen. We discern no error in the trial court's ruling. Corona could conduct a records check of the truck's license plate for any reason without violating the Fourth Amendment, as there is no reasonable expectation of privacy in license plates affixed to vehicles on public roads. (See, e.g., *Olabisiomotosho v. City of Houston* (5th Cir. 1999) 185 F.3d 521, 529 ["A motorist has no privacy interest in her license plate number."].) Once the records check revealed that the truck had been reported as stolen, Corona had probable cause to initiate a traffic stop. (See *Whren v. United States* (1996) 517 U.S. 806, 813 [constitutional reasonableness of traffic stop not dependent on actual motivations of the individual officer involved].) In short, the trial court properly denied the motion to suppress.

B. *Prior Prison Terms*

Appellant contends he suffered only four prior prison terms, based on a written notification letter sent by the correctional case records manager to the trial court. Appellant's admission of the six prior prison term allegations, however, constituted substantial evidence to support imposition of the six one-year enhancements for the prior prison terms. In light of appellant's admissions, he cannot challenge the factual basis for the enhancements without first obtaining a certificate of probable cause. (*People v. Zuniga* (2014) 225 Cal.App.4th 1178, 1187.)

Moreover, appellant misreads the notification letter. The letter states that the abstract of judgment reflects one section 667.5, subdivision (b) enhancement and five section 667.5, subdivision (a) enhancements, each with one year imposed, for a total of six years. However, the term for a section 667.5, subdivision (a) enhancement is three years. The letter asked the court to review the case files and determine if a correction is required. Thus, the notification letter does not establish that appellant suffered only four prior prison terms. In short, appellant has not demonstrated that the imposition of six one-year enhancements was unauthorized.

The abstract of judgment, however, incorrectly reflects the trial court's oral pronouncement of sentence. The court orally imposed six one-year section 667.5, subdivision (b) enhancements, not one section 667.5, subdivision (b) enhancement and five section 667.5, subdvision (a) enhancements. Accordingly, we will order the abstract of judgment corrected to properly reflect that appellant was sentenced to serve one year for each of six prior prison term enhancements pursuant to section 667.5, subdivision (b).

C. *Good Time/Work Time Credits*

Appellant asserts that he was limited to a maximum of 15 percent in presentence custody credits. (See § 2933.1 ["Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933."].) Appellant contends that he is entitled to earn up to a maximum of 50 percent in custody credits, as his prior strike (a first-degree residential burglary) was not a violent felony. (See *People v. Singleton* (2007) 155 Cal.App.4th 1332, 1340 [first degree residential burglary not a violent felony for purposes of section 667.5, subdivision (c)(21), where insufficient evidence was presented that another person was present in the residence at the time of the

burglary].) However, appellant failed to establish that his presentence custody credits were limited to 15 percent of the maximum. Indeed, the record establishes that appellant was awarded good time/work time credits in an amount equal to actual days of custody, pursuant to section 4019. (See § 4019, subd. (b) [for each four-day custody period, one day is deducted for period of confinement unless prisoner has refused to satisfactorily perform assigned labor], subd. (c) [for each four-day custody period, one day is deducted for period of confinement unless prisoner has not satisfactorily complied with reasonable rules and regulations]; subd. (f) [a term of four days will be deemed to have been served for every two days spent in actual custody]; compare *People v. Caceres* (1997) 52 Cal.App.4th 106, 109 [defendant, who pled guilty to committing a lewd act on a child, awarded 480 days precommitment credit, consisting of 418 days actual custody and 62 days conduct credit (15 percent of 418) under section 2933.1].) Thus, appellant has not shown he was denied his maximum presentence custody credits.

D. *Ineffective Assistance of Appellate Counsel*

Finally, appellant contends appointed counsel's representation was inadequate, as counsel failed to raise the issues above. However, this court has examined the entire record in accordance with *People v. Wende, supra*, 25 Cal.3d at pages 441-442, and is satisfied appellant's attorney has fully complied with the responsibilities of counsel, and no arguable issues exist. Thus, appointed counsel's representation was adequate. Accordingly, we deny appellant's request for new appellate counsel.

## DISPOSITION

The abstract of judgment is amended to reflect the trial court's oral pronouncement of sentence, by correcting the "PC section 667.5(a)" enhancements

to "PC section 667.5(b)" enhancements. As modified, the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment and to forward a copy to the California Department of Corrections and Rehabilitation.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.